

REMARKS

This Amendment is submitted in reply to the final Office Action mailed on November 3, 2010. No fees are due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-00505 on the account statement.

Claims 1-22 are pending in the application. In the Office Action, the drawings are objected under 37 CFR 1.83(a). In the Office Action, Claims 1-22 are rejected under 35 U.S.C. §103. In response, Claims 1, 17-18 and 20 have been amended and Claims 12 and 15 have been canceled. The amendments do not add new matter and are supported in the specification at, for example, page 5, lines 15-25; and the originally filed claims. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 1-8, 12-15 and 17-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 26 09 520 to Kimura ("*Kimura*") and U.S. Patent No. 4,598,826 to Shinbach ("*Shinbach*"). Applicants respectfully submit that the cited references are deficient with respect to the present claims.

Currently amended independent Claims 1, 17-18 and 20 are directed, in part, to containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns, wherein the opposed back and front walls, each have a respective top edge, the walls being sealed together proximate to the respective top edges defining an internal space between them, wherein the pair of tear-limiting strips defines a tear path that extends from an end of a wall to the top edge. The amendments do not add new matter and are supported in the specification at, for example, page 5, lines 15-25; and the originally filed claims. The containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. By setting limits to the area available for tearing and defining such area entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See, specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is

reduced. See, specification, page 5, lines 7-13. Applicants respectfully submit that *Kimura* and *Shinbach* fails to disclose or suggest each and every element of the present claims.

Kimura and *Shinbach* fail to disclose or suggest containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns, wherein the opposed back and front walls, each have a respective top edge, the walls being sealed together proximate to the respective top edges defining an internal space between them, wherein the pair of tear-limiting strips defines a tear path that extends from an end of a wall to the top edge as required, in part, by independent Claims 1, 17-18 and 20. Instead, *Kimura* is entirely directed to packages having a package body, a sticker attached to the package body and defining a tear line for opening an end of the package. See, *Kimura*, English Abstract. *Kimura* fails to disclose or suggest the presently claimed tear paths at any place in the disclosure. *Shinbach* is entirely directed to a heat-sealable laminated package for hermetically sealing an object in a pouch of the package. See, *Shinbach*, Abstract. *Shinbach* fails to disclose or suggest the presently claimed tear paths at any place in the disclosure.

Accordingly, Applicant respectfully requests that the obviousness rejections with respect to Claims 1-8, 12-15 and 17-22 in view of *Kimura* and *Shinbach* be reconsidered and the rejections be withdrawn.

In the Office Action, Claims 9, 11 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and *Shinbach*, and in further view of French Patent No. 2 832 698 to Jammet et al. ("*Jammet*"). Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and *Shinbach*, and in further view of U.S. Patent No. 5,186,543 to Cochran ("*Cochran*"). Applicants respectfully submit that the cited references are deficient with respect to the present claims.

As discussed above, currently amended independent Claims 1, 17-18 and 20 are directed, in part, to containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns, wherein the opposed back and front walls, each have a respective top edge, the walls being sealed together proximate to the respective top edges defining an internal space between them, wherein the pair of tear-limiting strips defines a tear path that extends from an end of a wall to the top edge. The amendments do not add new matter and are supported in the specification at, for example, page 5, lines 15-25; and the originally filed claims.

The containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. By setting limits to the area available for tearing and defining such area entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See, specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is reduced. See, specification, page 5, lines 7-13. Applicants respectfully submit that the cited references fail to disclose or suggest each and every element of the present claims.

Kimura, *Jammet* and *Cochran* fail to disclose or suggest containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns, wherein the opposed back and front walls, each have a respective top edge, the walls being sealed together proximate to the respective top edges defining an internal space between them, wherein the pair of tear-limiting strips defines a tear path that extends from an end of a wall to the top edge as required, in part, by independent Claims 1, 17-18 and 20. Instead, *Kimura* is entirely directed to packages having a package body, a sticker attached to the package body and defining a tear line for opening an end of the package. See, *Kimura*, English Abstract. *Jammet* is entirely directed to a container having two lateral walls, a bottom and a filling orifice capable of being closed after the container has been filled with a product. The container is formed from a tearable band material and includes at least one stiffening element 50. See, *Jammet*, Claim 1; Figures 1-8. *Cochran* is entirely directed to a container having zipper elements and bag walls and guide strips for tearing the container open along tear lines. See, *Cochran*, Abstract. *Kimura*, *Jammet* and *Cochran* fail to disclose or suggest the presently claimed tear paths at any place in the disclosure.

Applicants further submit that what the Patent Office has done here is to apply hindsight reasoning by attempting to selectively piece together teachings of each of the references in an attempt to recreate what the claimed invention discloses. Applicants respectfully submit that if it is proper for the Patent Office to combine any number of references to arrive at the present claims simply because each reference suggests an element of the present claims, then every invention would effectively be rendered obvious. Instead, the skilled artisan must have a reason

to combine the cited references to arrive at the present claims. Applicants respectfully submit that such a reason is not present in the instant case.

For the reasons discussed above, the cited references do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious.

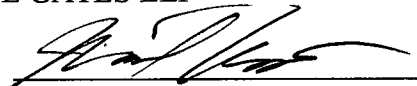
Accordingly, Applicants respectfully request that the obviousness rejections of Claims 1-22 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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